2898.

SUPREME COURT OF THE UNITED STATES.

No. 182.

GEO. W. PARKS, ADMINISTRATOR OF SAMUEL PARKS

AGAINST

JOHN ROSS.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF COLUMBIA.

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Parks vs. Ross.

Writ of error.

UNITED STATES OF AMERICA.

The President of the United States, to the judges of the circuit court of the United States, for the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, or some of you, between George W. Parks, administrator of Samuel Parks, plaintiff, and John Ross, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your hand, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of said Supreme Court.

Issued this 22d day of November, 1848.

WM. BRENT,
Clerk circuit court, Washington co'ty, D. C.

Citation.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to John Ross, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein a certain *a certain* George W. Parks, administrator of Samuel Parks, is plaintiff in error, and you are defendant in error, to shew cause, if any there be, why judgment rendered against the said plaintiff in error, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. W. Cranch, chief judge of the circuit court of the District of Columbia, this 22d day of November, 1848.

W. CRANCH.

Service acknowledged 28th November, 1848.

JOS. H. BRADLEY,
Att'y for John Ross.

Copy of appeal bond.

Know all men by these presents, that I, Thomas J. Campbell, of McMinn county, Tennessee, temporarily residing in Washington, as Clerk of the House of Representatives, am held and firmly bound unto John Ross, of the Cherokee nation, west, in the sum of two hundred dollars, current money of the United States, to be paid to the said John Ross, his certain attorney, executors, administrators, and assigns; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-second day of November, eighteen hundred and forty-eight.

Whereas lately, at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein George W. Parks, administrator of Samuel Parks, was plaintiff, and the said John Ross was defendant, judgment was rendered against the said plaintiff; and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said John Ross, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next.

Now, the condition of the above obligation is such, that if the said George W. Parks, administrator of Samuel Parks, shall prosecute his writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

THO. J. CAMPBELL. [SEAL.]

Signed, sealed, and delivered, in the presence of—
BEN. E. GREEN.

Approved:
W. CRANCH.

True copy—Test:
JNO. A. SMITH, *Clerk*.

Style of court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-seventh day of the same month, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-second, were present, William Cranch, chief judge; the honorable James S. Morsell and James Dunlop, associate judges; Alexander Hunter, esquire, marshal; William Brent, clerk.

In the record of the proceedings of the said court, among others are the following, to wit:

Parties.

GEORGE W. PARKS, adm'r of Samuel Parks,
vs.
JOHN ROSS.

Be it remembered, that heretofore, to wit, on the eleventh day of July, in the year of our Lord one thousand eight hundred and forty-four, the said plaintiff, by Robert L. Brent, esquire, his attorney, prosecuted and sued forth out of the circuit court here the United States writ of capias ad respondendum, directed to the said marshal of the District aforesaid, in the words and of the tenor following, to wit:

Capias ad respondendum.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the marshal of the District of Columbia, greeting:

We command you that you take John Ross, late of Washington county, if he shall be found within the county of Washington, in our said District, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of November next, to answer unto George W. Parks, administrator of Samuel Parks, in a plea of trespass on the case and so forth.

Hereof fail not at your peril, and have you then and there this writ.

Witness W. Cranch, esquire, chief judge of our said court, at the city of Washington, the 4th day of June, anno domini one thousand eight hundred and forty-four.

Issued the 11th day of July, 1844.

(BRENT.) W. BRENT, *Clerk.*

And the aforesaid plaintiff, by his attorney aforesaid, on the day of prosecuting and suing forth the aforesaid writ, declared against the said defendant in the plea aforesaid in form following, to wit:

Nar.

DISTRICT OF COLUMBIA,
Washington county, ss.

John Ross, late of said county, was attached to answer unto George W. Parke, administrator of Samuel Parke, deceased, of a plea of trespass on the case, &c. And thereupon, the said plaintiff, by Henry May, his attorney, complains: For that whereas the said defendant, on the first day of May, in the year of our Lord eighteen hundred and forty-two, to wit, at the county aforesaid, was indebted to the said Samuel Parke in a large sum of money, to wit, the sum of eighteen hundred dollars, lawful money, for the work and labor, care, diligence, and attendance of the said Samuel, before that time done, performed,

and bestowed by the said Samuel Parke, in and about the business of the said defendant, for him, and at his special interest and request; and for divers materials, and other necessary things, made, done, furnished, and applied in and about that work, labor, and business of the defendant, and at his like special instance and request: And also in another like sum of money, for the use and hire of certain teams of horses, wagons and carts, for a long time then elapsed, had, held, used, possessed, and enjoyed by said defendant: And also in another like sum of money, for sundry matters properly chargeable in account, as by the particular account thereof, herewith into court, may and doth more fully and at large appear: And also in another like sum of money, for divers goods, wares, and merchandise, by the said Samuel before that time sold and delivered to the said defendant, and at his like special instance and request: And also in another like sum of money, for money by Samuel before that time lent and advanced to, and paid, laid out, and expended for, the said defendant, and at his like special instance and request: And also in another like sum of money, for so much other money by the said defendant before that time had and received to and for the use of the said Samuel. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook, and then and there faithfully promised the said Samuel, to pay him the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the day and year aforesaid, at the county aforesaid, accounted with the said Samuel of and concerning divers other sums of money, before that time due and owing from the said defendant to the said Samuel, and then in arrear and unpaid; and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said Samuel in another large sum of money, to wit, in the further sum of eighteen hundred dollars, of like lawful money; and being so found in arrear and indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and faithfully promised the said Samuel to pay him the last mentioned sum of money, when the said defendant should be thereto afterwards requested.

Nevertheless, the said defendant, not regarding his said promises and undertakings, hath not yet paid the aforesaid several sums of money, or either of them, or any part of either of them, to the said Samuel in his lifetime, (although so to do the said defendant was requested by the said Samuel afterwards, to wit, on the day and year aforesaid, and often afterwards, at the county aforesaid,) nor to the plaintiff since his death; but to pay the same the said defendant hath hitherto altogether refused, and doth still refuse so to do, to the damage of said plaintiff as administrator aforesaid in the sum of eighteen hundred dollars, and therefore he brings this suit, &c.

And the said George W. brings into court here the letters of admin-

istration granted to the said George W., whereby it suffices. This appears to the court here that the said George W. is administrator as aforesaid.

H. MAY, *Plaintiff's attorny.*

Marshal's return, Nov., 1844.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-four, of the return of the foregoing writ, comes into the court here the plaintiff, by his attorney, and the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

Cepi. A. HUNTER, *Marshal.*

Def'ts app'ce.—Rule plea and imp. to March term, 1845.

And the said defendant being called, appears in court here, by Jos. H. Bradley, esq., his attorney; and thereupon, on motion of the said plaintiff, by his attorney aforesaid, it is ruled by the court here that the said defendant answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and the said defendant by his attorney aforesaid, defend the force and injury, when, and so forth, and prays leave of the court here to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, and to him it is granted; and the same day is given to the aforesaid plaintiff also.

March term, 1845.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-five, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid.

Plea of non assumpsit.

And the said defendant by his attorney aforesaid, as before, defends the force and injury, when, and so forth; and saith that he did not assume upon himself, in manner and form as the aforesaid plaintiff above against him hath complained, and of this he puts himself upon the country.

Issue joined.

And the said plaintiff in like manner, and so forth.

Venire facias.

Therefore, let a jury thereon appear before the court here on the third Monday of October next, by whom, &c., and who neither, &c.

and bestowed by the said Samuel Parke, in and about the business of the said defendant, for him, and at his special interest and request; and for divers materials, and other necessary things, made, done, furnished, and applied in and about that work, labor, and business of the defendant, and at his like special instance and request: And also in another like sum of money, for the use and hire of certain teams of horses, wagons and carts, for a long time then elapsed, had, held, used, possessed, and enjoyed by said defendant: And also in another like sum of money, for sundry matters properly chargeable in account, as by the particular account thereof, herewith into court, may and doth more fully and at large appear: And also in another like sum of money, for divers goods, wares, and merchandise, by the said Samuel before that time sold and delivered to the said defendant, and at his like special instance and request: And also in another like sum of money, for money by Samuel before that time lent and advanced to, and paid, laid out, and expended for, the said defendant, and at his like special instance and request: And also in another like sum of money, for so much other money by the said defendant before that time had and received to and for the use of the said Samuel. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook, and then and there faithfully promised the said Samuel, to pay him the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the day and year aforesaid, at the county aforesaid, accounted with the said Samuel of and concerning divers other sums of money, before that time due and owing from the said defendant to the said Samuel, and then in arrear and unpaid; and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said Samuel in another large sum of money, to wit, in the further sum of eighteen hundred dollars, of like lawful money; and being so found in arrear and indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and faithfully promised the said Samuel to pay him the last mentioned sum of money, when the said defendant should be thereto afterwards requested.

Nevertheless, the said defendant, not regarding his said promises and undertakings, hath not yet paid the aforesaid several sums of money, or either of them, or any part of either of them, to the said Samuel in his lifetime, (although so to do the said defendant was requested by the said Samuel afterwards, to wit, on the day and year aforesaid, and often afterwards, at the county aforesaid,) nor to the plaintiff since his death; but to pay the same the said defendant hath hitherto altogether refused, and doth still refuse so to do, to the damage of said plaintiff as administrator aforesaid in the sum of eighteen hundred dollars, and therefore he brings this suit, &c.

And the said George W. brings into court here the letters of admin-

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istration granted to the said George W., whereby it suffices. This appears to the court here that the said George W. is administrator as aforesaid.

H. MAY, *Plaintiff's attorny*.

Marshal's return, Nov., 1844.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-four, of the return of the foregoing writ, comes into the court here the plaintiff, by his attorney, and the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

Cepi. A. HUNTER, *Marshal*.

Def'ts app'ce.—Rule plea and imp. to March term, 1845.

And the said defendant being called, appears in court here, by Jos. H. Bradley, esq., his attorney; and thereupon, on motion of the said plaintiff, by his attorney aforesaid, it is ruled by the court here that the said defendant answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and the said defendant by his attorney aforesaid, defend the force and injury, when, and so forth, and prays leave of the court here to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, and to him it is granted; and the same day is given to the aforesaid plaintiff also.

March term, 1845.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-five, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid.

Plea of non assumpsit.

And the said defendant by his attorney aforesaid, as before, defends the force and injury, when, and so forth; and saith that he did not assume upon himself, in manner and form as the aforesaid plaintiff above against him hath complained, and of this he puts himself upon the country.

Issue joined.

And the said plaintiff in like manner, and so forth.

Venire facias.

Therefore, let a jury thereon appear before the court here on the third Monday of October next, by whom, &c., and who neither, &c.

and bestowed by the said Samuel Parke, in and about the business of the said defendant, for him, and at his special interest and request; and for divers materials, and other necessary things, made, done, furnished, and applied in and about that work, labor, and business of the defendant, and at his like special instance and request: And also in another like sum of money, for the use and hire of certain teams of horses, wagons and carts, for a long time then elapsed, had, held, used, possessed, and enjoyed by said defendant: And also in another like sum of money, for sundry matters properly chargeable in account, as by the particular account thereof, herewith into court, may and doth more fully and at large appear: And also in another like sum of money, for divers goods, wares, and merchandise, by the said Samuel before that time sold and delivered to the said defendant, and at his like special instance and request: And also in another like sum of money, for money by Samuel before that time lent and advanced to, and paid, laid out, and expended for, the said defendant, and at his like special instance and request: And also in another like sum of money, for so much other money by the said defendant before that time had and received to and for the use of the said Samuel. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook, and then and there faithfully promised the said Samuel, to pay him the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the day and year aforesaid, at the county aforesaid, accounted with the said Samuel of and concerning divers other sums of money, before that time due and owing from the said defendant to the said Samuel, and then in arrear and unpaid; and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said Samuel in another large sum of money, to wit, in the further sum of eighteen hundred dollars, of like lawful money; and being so found in arrear and indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and faithfully promised the said Samuel to pay him the last mentioned sum of money, when the said defendant should be thereto afterwards requested.

Nevertheless, the said defendant, not regarding his said promises and undertakings, hath not yet paid the aforesaid several sums of money, or either of them, or any part of either of them, to the said Samuel in his lifetime, (although so to do the said defendant was requested by the said Samuel afterwards, to wit, on the day and year aforesaid, and often afterwards, at the county aforesaid,) nor to the plaintiff since his death; but to pay the same the said defendant hath hitherto altogether refused, and doth still refuse so to do, to the damage of said plaintiff as administrator aforesaid in the sum of eighteen hundred dollars, and therefore he brings this suit, &c.

And the said George W. brings into court here the letters of admin-

istration granted to the said George W., whereby it suffices. This appears to the court here that the said George W. is administrator as aforesaid.

H. MAY, *Plaintiff's attorny*.

Marshal's return, Nov., 1844.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-four, of the return of the foregoing writ, comes into the court here the plaintiff, by his attorney, and the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

Cepi. A. HUNTER, *Marshal*.

Def'ts app'ce.—Rule plea and imp. to March term, 1845.

And the said defendant being called, appears in court here, by Jos. H. Bradley, esq., his attorney; and thereupon, on motion of the said plaintiff, by his attorney aforesaid, it is ruled by the court here that the said defendant answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and the said defendant by his attorney aforesaid, defend the force and injury, when, and so forth, and prays leave of the court here to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, and to him it is granted; and the same day is given to the aforesaid plaintiff also.

March term, 1845.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-five, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid.

Plea of non assumpsit.

And the said defendant by his attorney aforesaid, as before, defends the force and injury, when, and so forth; and saith that he did not assume upon himself, in manner and form as the aforesaid plaintiff above against him hath complained, and of this he puts himself upon the country.

Issue joined.

And the said plaintiff in like manner, and so forth.

Venire facias.

Therefore, let a jury thereon appear before the court here on the third Monday of October next, by whom, &c., and who neither, &c.

to recognise, &c., because as well, &c., and the same day is given to the aforesaid parties, then and there, &c.

October term, 1845.

At which said third Monday of October, in the year of our Lord one thousand eight hundred and forty-five, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid; thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid, and by order of the court here thereon, the said cause is continued until the fourth Monday of March next.

March term, 1846.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-six, comes again into the circuit court here as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, the said cause is continued until the third Monday of October next.

October term, 1846.

At which said third Monday of October, in the year of our Lord one thousand eight hundred and forty-six, comes again into the circuit court here as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid, and by order of the court here thereon, the said cause is continued until the fourth Monday of March next.

March term, 1847.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-seven, comes again into the circuit court here, as well the said plaintiff by his attorney aforesaid, as the said defendant, by his attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, the said cause is continued until the third Monday of October next.

October term, 1847.

At which said third Monday of October, in the year of our Lord one thousand eight hundred and forty-seven, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the

said parties by their attorneys aforesaid, and by order of the court here thereon, the said cause is continued until the fourth Monday of March next.

March term, 1848.

And now, at this day, to wit, the said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-eight, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid; whereupon, for trying the issue aforesaid, it is ordered by the court here that twelve persons, from the panel of petit jurors returned to the court here by the marshal of the District of Columbia, be called; who being called came, to wit:

Jury.

1. Peter Magruder,
2. Edward Lacy,
3. Gregory Ennis,
4. Almon Baldwin,
5. Louis Beeler,
6. Wm. T. Upperman,
7. Henry Trunnell,
8. Rich'd R. Sheckells,
9. John E. Neale,
10. Philip Mohun,
11. Joseph W. Beck,
12. Zach. M. Offutt.

Who being empannelled and sworn to say the truth in the premises, upon their oath do say:

Verdict for defendant.

That the said defendant did not assume upon himself, and promise in manner and form as the said plaintiff above against him complains, as the said defendant above by pleading hath alleged.

Judgment on verdict.

Therefore, it is considered by the court here that the said plaintiff take nothing by his writ and declaration aforesaid, but be in mercy for his false clamor thereupon; and that the said defendant go thereof without day, &c. It is also considered by the court here, that the said defendant recover against the said plaintiff the sum of twenty dollars and twenty-one cents, by the court now here adjudged unto the said defendant, for his costs and charges by him about his defence in this behalf laid out and expended, and that the said defendant go thereof without day, &c.

Before the jurors aforesaid retired from the bar of the court here, the said plaintiff, by his attorney aforesaid, filed in court here the following bills of exceptions, to wit:

GEORGE W. PARKS, adm'r of Samuel Parks,
vs.
JOHN ROSS.

Defendant's 1st bill of exceptions.—Defendant's 1st exceptions.

On the trial of this cause the plaintiff, to maintain the issue on his part, offered evidence tending to show that the plaintiff's intestate hired

four wagons to be used, and the same were in fact used, in the emigration of the Cherokee nation to the west of the Mississippi, under the arrangement with General Scott, in the year '38, and produced and read to the jury the account and receipt of the plaintiff, as follows—(copied in page 23,) and also offered to read in evidence the account presented by the defendant to the Government of the United States, as follows, (copied in page 25,) with account of detachment No. 11,) in which detachment it was admitted the said wagons were employed and were part of the 51 wagons therein mentioned; and also the opinion and decision of Mr. John Bell, Secretary of War, thereon; and the preamble and resolutions of the Cherokee nation referred to therein, (copied in page 27 and 40;) and the requisition of the War Department, (copied in page 45,) and the warrant on the Treasury, (copied in page 47,) and the receipt of the defendant, (copied in page 48,) to all which offered evidence the defendant, by his counsel, objects; but the court overruled the said objection and permit the same to be read; and the defendant, by his counsel, excepts thereto, and prays the court to sign and seal, and cause to be enrolled, this his first bill of exceptions, which is done accordingly, this 10th day of April, 1848.

W. CRANCH, [SEAL.]
JAS. S. MORSELL. [SEAL.]

Defendant's 2d bill of exceptions.

GEORGE W. PARKS, adm'r of Samuel Parks,
vs.
JOHN ROSS.

Richard Taylor's testimony.

On the further trial of this cause, and after the evidence contained in the foregoing bill of exceptions made part hereof, the plaintiff, further to maintain the issue on his part joined, gave evidence to show and prove, by Richard Taylor, (the said evidence being noted in writing by the defendant's attorney,) that he is a Cherokee, and was one of the delegates originally appointed by that nation to enter into an arrangement with the United States for the transportation and emigration of the said Cherokee nation to the country set apart for them west of Mississippi river; that he had charge of the business of generally superintending the wagons of one detachment in which the wagons of the plaintiff's intestate were employed; that shortly after they arrived in the Cherokee country he was paid off by John Ross, and the accounts of all those whose wagons had been employed were settled and adjusted by the committee or delegates, and they were paid for eighty days travel, and the balance was left unpaid till the money could be received from the United States; the committee or delegates of the emigration were all present with Ross; they were appointed by the nation in council, before they started for the west, and never delegated their whole power to John Ross, but always acted when they were needed. John Ross had a general order and power to pay the claims arising out

of the emigration; he received the money and paid it out. Several years ago he paid over to the Cherokee nation $125,000, which had been saved from the expenses of the emigration; and being asked by the plaintiff what had become of the $180,000 received, he replied: Just before I left home to come to the United States, Mr. Ross made a final settlement with the nation of all the money received by him for the emigration; being asked by plaintiff, he says it was in writing, and plaintiff insists his answer is not evidence. He states that he is one of the execution council of the nation, and now a delegate from the nation to the United States.

Being cross examined he says: The only power Mr. Ross had to pay claims, was to pay such claims as had been passed by the committee or delegates; that he does not know out of what fund Mr. Ross could have saved the $125,000, except the money received for return wagons; that no money ever was paid to any person, nor any claim ever presented by any person to the committee or delegates, for "return wagon money;" that the witness himself made the contract with the plaintiff's intestate for the hire of his wagons, and no contract was made for, and no reference made to, any return wagons, for it was understood they were all to remain in the nation; that plaintiff's intestate married the sister of witness, and was a citizen of the Cherokee nation; that he sold and disposed of his wagons and teams in the Cherokee nation, except one, with which he returned to the State of Tennessee, for the purpose, as he stated to witness, of bringing out his family; he did not return, but died in Tennessee, and he never in his lifetime to witness, or with his knowledge, set up any claim for return wagons; and witness was present when the account of plaintiff's intestate was settled, and afterwards, when the full balance was paid to the plaintiff; that there were various incidental expenses not estimated for originally, but which had to be paid by the nation, growing out of the delays and other causes in the emigration; that they were paid by the nation, and witness does not know out of what fund they could have been paid, except out of the return wagon money; and witness believes, from the facts he has stated, that the money so paid over by Ross to the nation, and the incidental expenses of the emigration, were paid out of that fund.

And thereupon, and after the testimony of the said Richard Taylor had been given, the plaintiff further offered to read in evidence from a a certain printed document, purporting to be Senate document 298, 1st session 29th Congress, two certain papers as follows, marked B and C, (copied in page 49, ,) and to lay a foundation therefor gave to the court the following evidence, (evidence of Burke and J. R. Rogers, copied in pages 20 and 21, ;) and the defendant objected to the admissibility of the said papers so offered to be read in evidence, maintaining there was no sufficient foundation laid for them as secondary proof, but the court overruled his said objection, and permitted the same to be read in evidence, and the same was read accordingly, and the defendant excepts thereto, and prays the court to sign and seal this his bill of exceptions, which is done accordingly;

and the same is ordered to be enrolled according to the statute, this 10th day of April, 1848.

W. CRANCH, [SEAL.]
JAS. S. MORSELL. [SEAL.]

Mr. Burke's statement.

Mr. Burke states, that he was one of the commissioners who sat in Washington, in 1846, to investigate and settle Cherokee difficulties.

The board sat several weeks, during which time John Ross was a constant attendant on the board.

The Senate document No. 298, 1st session 29th Congress, was brought to the notice of the board; a copy was furnished Mr. Burke by the clerk of the House [of] Representatives, and another copy, with Mr. Ross' name upon it, was furnished by a member of one of the delegation, he believes Mr. Ross.

The document was received, treated, commented on, and admitted to be authentic by all parties before the board, so far as it purported to be a reprint of documents or papers, (but not admitting all the facts stated in arguments of opponents,) by the old settlers' treaty party, and Ross party, and Mr. Ross himself, present and making no objection to the authenticity of any part; the resolutions of the Cherokee council of the 14th December, 1842, and Ross' message in reply, dated December 20, 1842, printed on pages 106, '7, and '8, were commented on very severely by Judge Paschal, who charged Ross with gross frauds, and read, he believes, in his presence, though he cannot swear positively to Ross' presence at the time said documents were read; Ross was generally a most constant attendant on the board, and Mr. Burke does not believe he was absent a whole hour in the three weeks of their session.

Mr. Burke remarked, and was surprised at, the equanimity with which Ross bore the charges of fraud, murder, and other crimes.

The exhibits B and C were referred to repeatedly by all the parties before the board as authentic documents, and not objected to by Mr. Ross or his counsel.

All the delegations of all parties made no objection to any document used or referred to before the board, purporting to be a document printed by Congress.

J. K. Rogers' statement.

Johnson K. Rogers states, that he was present during the sessions of the Cherokee board—Messrs. Burke, Parris, and Armstrong; that nearly the whole of Senate document No. 298, 1st session 29th Congress, was read to the board in the presence of John Ross; parts were read by Messrs. Kendall and Stanbaugh; parts by Judge Paschal.

The latter particularly read exhibits B and C, in page 106, '7, and '8; resolutions of Cherokee council, and message of John Ross in reply, of December 14 and 20, 1842, in John Ross' hearing and presence, and commented very severely on said message; to the authenticity of which,

as read and printed in said Senate document, John Ross made no objection, either personally or by counsel; Ross said not a word about it.

Plaintiff's 1st bill of exceptions.—Plaintiff's 1st bill of exceptions.

GEORGE W. PARKS, administrator of Samuel Parks,
vs.
JOHN ROSS.

And the evidence stated in the foregoing bill of exceptions, made part hereof, having been read to the jury, the plaintiff rested; and thereupon the defendant prayed the court to instruct the jury, that upon the whole evidence aforesaid, if the same shall be believed by the jury, the plaintiff is not entitled to recover in this action.

Which instruction the court granted; to the granting of which the plaintiff, by his counsel, excepts, and prays the court to sign and seal this his bill of exceptions, which is accordingly done this 11th day of April, 1848.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

GEORGE W. PARKS, administrator of Samuel Parks,
vs.
JOHN ROSS.

Plaintiff's 2d bill of exceptions.—Plaintiff's 2d exceptions.

And thereupon, and upon the whole evidence in the said 1st and 2d bill of exceptions of said defendant contained, made part hereof, the defendant by his counsel prays the court to instruct the jury that, if the same is believed by the jury to be true, the plaintiff is not entitled to recover in this action; which instruction the court granted; to the granting of which the plaintiff, by his counsel, excepts and prays the court to sign, seal, and enrol this his exception, which is accordingly done this 11th day of April, 1848.

W. CRANCH, [SEAL.]
JAS. DUNLOP. [SEAL.]

Account and receipt of plaintiff.

Account and receipt of plaintiff, referred to in defendant's 1st bill of exceptions, page 15.

The Cherokee nation to Samuel Parks, deceased, DR.

For the services of four wagons and teams, in the emigration of the Cherokees in Captain Richard Taylor's detachment, commencing the first of November, 1838, up to the 24th March, 1839, making 144 days, at $5 per day each - - - - - $2,880 00

CR.

By cash advanced Samuel Parks, as per receipt on the rolls $1,600 00

Balance due - - - - $1,280 00

Received of John Ross, superintendent of Cherokee emigration, one thousand two hundred and eighty dollars, in full for the balance due of the above account.

Signed duplicate.

Park Hill, Cherokee nation, Dec. 13th, 1841.

G. W. PARKS,
Executor of Samuel Parks, deceased.

Witness:
DAVID VAUN.

True copy, compared by—

JOS. H. BRADLEY, *for def't.*
BEN. E. GREEN, *for plf't.*

Account presented by John Ross to the War Department, referred to in the defendant's 1st bill of exceptions, in page 15.

The United States, in account with the Cherokee nation, for the expenses incurred in the removal of the Cherokees, under an arrangement with Major General Winfield Scott.

For amount of subsistence and forage issued to Cherokee emigrants, prior to their departure west, and for which a requisition was made on Major General Scott, but not yet paid, and is on file in the office of Indian affairs, War Department; also a certified copy of the abstracts furnished the principal superintendent of the emigration by the contractor - - - - - - $92,781 50

The following rations of subsistence and forage, also issued to Cherokee emigrants, prior to their departure, a part of which was admitted to be included in the above abstract, and the balance issued after said abstract was made out, as will appear by comparing dates with the abstracts on file, and the one herewith, viz:

1,200 rations of flour, at 5 cts. - - -	$60 00	
1,212 rations of coffee, at 2 cts. - - -	24 24	
1,212 rations of sugar, at 2 cts. - - -	24 24	
4,939 complete rations of provisions, at 16 cts.	790 24	
4,939 rations soap, 147½ lbs., at 15 cts. -	22 16½	
1,749 complete forage rations, at 40 cts. -	699 60	
45 rations of hay, at 12 cts. - - -	5 40	
Carried forward - - - -	-	$1,625 88½

For amount of expenses for detachments.

No. 1, per voucher herewith - -	$67,884 13½	
No. 2, per voucher herewith - -	72,317 10½	
No. 3, per voucher herewith - -	105,923 12½	
No. 4, per voucher herewith - -	97,529 20	
No. 5, per voucher herewith - -	102,226 37½	
No. 6, per voucher herewith - -	95,359 85	
No. 7, per voucher herewith - -	103,759 66¾	
No. 8, per voucher herewith - -	111,741 45	
No. 9, per voucher herewith - -	84,558 45	
No. 10, per voucher herewith - -	112,504 80½	
No. 11, per voucher herewith - -	106,730 61	
No. 12, per voucher herewith - -	182,407 84	
No. 13, per voucher herewith - -	20,395 87¼	
		$618,339 02½
		$1,357,745 86½

Cr.

By cash received of Captain John Page, United States disbursing agent, on sundry requisitions drawn on Major General Winfield Scott - -	$776,398 98
Balance due the Cherokee nation - - - -	$581,346 88½

I certify, that the foregoing account, amounting to $1,357,745 88½ is accurate and just, and that the balance of $581,346 88½ is due as stated.

JOHN ROSS, *Principal Chief*,
And super'g agt. of the Cherokee nation for Cherokee removal.

Washington city, May 18, 1840.

A.

Account presented by John Ross to War Department for detachment No. 11, referred to in defendant's first bill of exceptions, marked, (copied in page 15.)

The United States in account with the Cherokee nation for expenses incurred under an arrangement with Major General Winfield Scott, for the removal of the Cherokees.

Detachment No. 11.	
For compensation to Richard Taylor, conductor, from 20th September, 1838, to 24th March, 1839, inclusive, 186 days, $5 per day, - - - -	$980 00
For compensation to assistant conductor for same time, at $3 per day, - - - - -	558 00
For compensation to attending physician, for same time, at $, $930; allowance for returning $120,	1,050 00
For compensation to interpreter to physician, for same time, at $2 50 per day, - - - -	465 00
For compensation to commissary and wagon-master, for same time, at $2 50 each per day - - -	930 00
For assistant commissary and assistant wagon-master, for same time, at $2 each per day, - - -	744 00
For hire of fifty-one wagons and teams, for 1,029 persons, from 1st November, 1838, to 24th March, 1839, inclusive, 144 days, at $5 per day, $36,720; allowance of 40 days for returning, at $7 per day each, including travelling expenses, $14,280, - - -	51,000 00
For forage of 460 wagons and riding horses, for same time, making 66,240 forage rations, at 40 cents, -	26,496 00
For subsistence for 1,029 persons, from 6th November, 1838, to 25th March, 1839, inclusive, 139 days, 143,041 rations, at 16 cents, - - - -	22,883 96
For allowance of 3 lbs. soap to each 100 rations, making 4,291 lbs., at 15 cents, - - - -	643 65
For allowance for ferriage, turnpikeage, &c., at the rate of $1,000 for each detachment of 1,000 persons, -	1,029 00
	$106,730 61

I certify that the above account is accurate and just.

JOHN ROSS, *Principal Chief,*
and super'g agent of the Cherokee nation for Cherokee removal.

Decision of Hon. Jno. Bell, Secretary of War, referred to in defendants 1st bill of exceptions.

A claim was preferred by the representatives of the Cherokee people,

to whom had been intrusted the direction of their removal to the West, under an arrangement with Major General Winfield Scott in the summer of 1838, to the last administration, and the branch of it now under consideration was disallowed successively by the Commissioner of Indian Affairs, the Secretary of War, and the President of the United States. A revision of that decision is now asked, the claim having been fortified by additional evidence and documents since it was originally presented.

The sum now demanded amounts to $486,939 50¼. It is alleged to be payable out of the balance of the Cherokee fund, created by the treaty of 1835, and the law of 1838, to the representatives or agent of the Cherokee people, in trust for such of them as have rendered services, or furnished means of transportation, or subsistence to those who removed under the direction of their chief, John Ross, in 1838 and 1839. The instruction which has heretofore prevailed limited the time, (for the purpose of settling the compensation) within which the emigration was to be performed to 80 days, and the sum to be paid to $65 88 for each individual removed. This, it was conceived, was deducible from the correspondence between General W. Scott, and the Cherokee delegation in 1838, whose arrangements, by letter, were considered to be a contract for a specific sum, at which Mr. Ross and his associates, were bound to remove their brethren to the western territory.

The claimants, on the other hand, contend that the estimate, which was finally acceded to by General Scott in August, 1838, was nothing more than an exhibit of the daily cost of transporting and subsisting each individual, which was regarded as fixed but that the time assumed in the estimate was not binding on either party, but was to be subsequently ascertained by actual experiments, and the measure of compensation to be settled in the particular of time by the fact, as it should turn out, whether the number of days consumed in the emigration, should be more or fewer than eighty.

This question is one not entirely free from difficulty even now; and, certainly, until the deposition and "notes" of General Scott were adduced, the former in January, and the latter in June last, and the resolution of the Cherokee council of November 11, 1840, was adopted, the subject was not less embarrassed.

It may be necessary to refer to the different items of the estimate objected to by General Scott as extravagant, and afterwards, on 2d August, 1838, acceded to by him. It is the basis of the present claim. It follows:

Estimate for the emigration of a party of one thousand Cherokees to their country west of the Mississippi, distance eight hundred miles, eighty days going.

Fifty wagons and teams, (twenty persons to each wagon,) at a daily expense of $3 50, including forage - -	$28,000 00
Returning, $7 each, for every twenty miles -	14,000 00

Two hundred and fifty extra horses, 40 miles, each per day	1,000 00
Ferriages, &c.	1,000 00
Eighty thousand rations, at 16 cents each	12,800 00
Conductor, $5 per day	400 00
Assistant conductor, $3 per day	240 00
Physician, $5 per day	500 00
Physician returning, $15 for every hundred miles	120 00
Commissary, $2 50 per day	200 00
Assistant commissary, $2 per day	160 00
Wagon master, $2 50 per day	200 00
Assistant wagon master, $2 per day	160 00
Interpreter, $2 50 per day	200 00
	$65,880 00

For the eighty days on this footing, (adding for soap, 45 cents to every one hundred rations,) payment has been made in full. The excess over, or difference between the eighty, and the number of days actually employed in the removal from east to west, calculated after the same rate of remuneration, is the present demand. I think the ground on which the claim rests is materially varied by the recent statement of General Scott. Since the first decision was made, General Scott, in his answers to Mr. Clark's interrogation, states: "The march of the several Indian detachments was averaged, by estimate, at eighty days; and, on that estimate, money was advanced to Mr. John Ross.

If that estimate was found too great, Mr. Ross was to refund to the nation; and if too small, including the unavoidable delays mentioned above, it was understood and agreed that the subsistence, &c., for the excess of time on the road, was to be paid by the Government out of the funds of the Cherokees." And again: "The time of the actual removal (the commencement) on this side the Mississippi of each detachment, was to be marked by Captain Page, and the arrival of the detachment on the other side of the Mississippi, by Government agents there. Of course, the final settlement of the expenses of the removal was left for its termination."

In the "notes" submitted by General Scott, in June last, he is perhaps stronger to the same effect. "The understanding of the parties was common and distinct, that the eighty days allowed for the removal of each detachment, by land, was a mere assumption of a basis on which to calculate for the moment, the advances to be made by the United States on account of the movement and to set it agoing. If the advances proved to be too great, the excess was to be paid into the treasury of the nation; if too little, on account of more time in the movement, the United States were to make up the difference from the trust fund." In addition: "The Cherokee nation, through their national committee and council, in national council assembled," ordered, "that the aforesaid John Ross be, and he is hereby directed and fully empowered to proceed to Washington city, and to urge a settlement of thi

claim with all possible expedition, and to apply for, and receive from, the Government of the United States, in the name of the Cherokee nation, the balance due of five hundred and eighty-one thousand three hundred and forty-six dollars and eighty-eight and one-half cents, as stated in his account of the emigration claim, in order that the business growing out of it may be brought to a final close."

It is to be remarked, that the estimate submitted to General Scott was, in addition to his objections before the arrangement was closed, on 2d August, 1838, afterwards transmitted, on 22d August, to the Cherokee delegation, with memorials, by Cherokees, &c., complaining, by way of protest, of the extravagance of the sum agreed to be paid to Mr. Ross and his associates; which they answered on the 25th of same month, and on the same day received a reply, stating General Scott's opinion "that the savings which may be effected out of the general estimate agreed upon between us, for the subsistence of persons and horses, ought to have been reserved (over and above a reasonable compensation to the furnisher for his labor and risk from agents) for the benefit of all Cherokees interested, instead of allowing those savings, if any, to go into his pockets." He acknowledges, however, "the impossibility of arriving at any satisfactory result as to those savings or their amount; and being unwilling," he continues, "to delay the emigration now nearly ready to commence under your immediate direction, I withdraw, on the part of the United States, the objections intimated in my letter of the 22d instant, to the contract in question." This would seem, with the General's testimony as to the understanding of the contract, and what it was intended to be, to make the measure of daily compensation certain, as well as the principle upon which the ultimate settlement must be based.

The matter of return wagon hire, which is very large, (amounting to no less than $180,000 in the aggregate,) is not clear; General Scott, in his statement of June last, concurs in opinion with the Commissioner of Indian Affairs in thinking that this part of the claim ought to be disallowed if those wagons and teams did not return. It is not alleged that they returned, but it is said that it was determined that no white man should furnish wagons and teams; that some of them were provided by such Cherokees as had them, and others bought; that this was done with the knowledge of General Scott, as his correspondence shows; that from the fact of their being carried to a wilderness, sales of those wagons and teams were often out of the question, when there was a total loss of them; that as to all there was a great sacrifice in price; and that, in anticipation of this inevitable result, the return wagon-hire item was looked to as the source of remuneration. This must have happened to a greater or less extent, and presents in itself a strong claim upon equitable grounds. I imagine it to be correct that, if the Cherokee delegation had been content to receive $65,880 for every 1,000 persons, there would have been no complaint; and in this aggregate there is included the return wagon hire, although I cannot suppose there is any thing in the term itself, as has been contended. The strongest argument that

can be urged in its favor, and the one that chiefly influences my mind, is the resolution of the Cherokee council of November 11, 1840. It has been their pleasure, in the most solemn form in which their legislative power can be exercised, to say what disposition shall be made of this their own money; and I know of no objection to the allowance of what they have thus sanctioned. The only plausible difficulty that could be suggested is, that the Cherokees were much distracted and divided, and that a portion of the tribe might not cordially acquiesce in the order or decree of the council. Even if this be so, it exists more or less in every community. We are obliged to consider the acts of their constitutional authorities as binding on all. Besides, the act of union, of June 26, 1840, has been recognised by the Government of the United States as healing their dissensions, and obligatory on all.

On the 11th of November, 1840, (by a remarkable coincidence the same day that the Cherokee council empowered John Ross to settle and receive the amount of the claim under consideration,) my predecessor, thinking "sufficient time had elapsed to test the sincerity of the parties to the agreement of the 26th June last," directed the payment of the national Cherokee funds, annuities, &c., to those entitled by the treaty to receive them for the benefit of the tribe. The national funds due, amounting to upwards of $100,000, have, in consequence, been paid to the officers of the Cherokee tribe, by virtue of a resolution of the same council, (being only three days later,) at the same session, when the authority was conferred on Mr. Ross which relates to this claim. Of the full establishment of the Cherokee union, of the uninterrupted exercise of authority over the whole tribe by those whom it either placed in office or recognised as being in power of, in short, the rightful and legal authority to direct all the officers of the nation and control its interests, public and private, in those who then administered its government, and I believe still do—there can be no doubt.

Taking, then, the letter of General Scott, of August 25, 1838, and the formal withdrawal of all objections, on the part of the United States, to any of the items of the estimate which had been previously submitted and agreed to by him; understanding the true intent of the contract or arrangement between General Scott and the Cherokee delegates, from the General's answer to the claimants' interrogatories, and from his "notes," to be payment for the number of days properly employed in the emigration, after the rate agreed upon for the eighty; believing, from various affidavits on file, that there was no wanton or unnecessary delay; and requested by "the Cherokee nation, through the national committee and council in national council assembled," to settle with and pay to John Ross, in the name of the Cherokee nation, the balance due of $581,346 88½, as stated in his account of the emigration claim, I am constrained to allow the balance of this claim now unsettled, viz., $486,939 50¼, subject, however, to the following conditions and restrictions:

1. It appears that there has been a small over payment to Mr. Ross in his receipts from Captain Page, which were intended to cover the

expenses of the 80 days, at $65 88 per individual, of 36 cents on each person, as it is stated, making an aggregate of excess of $4,219 56, less by the price of three pounds of soap (45 cents) to every 100 rations. This matter should be carefully examined by the accounting officers, and whatever may have been paid heretofore, over and above the $65,880 per 1,000 for 80 days, (adding thereto 45 cents for every 100 rations,) should be deducted from the amount now allowed.

2. There is a discrepancy in the number of persons reported by Captain Stephenson and those reported by Mr. Ross. The reports of Captain Stephenson are the lowest, and they give the number of Cherokees who arrived west, and who, consequently, completed their emigration. For both reasons, his returns should be taken for the present as the guide, and the difference be satisfactorily explained at a future day.

3. Abstract No. 13 is for a party (of 231, as claimed by Mr. Ross, and one of 219, as reported by Mr. John Drew, N. B. Downenburg, and Captain Stephenson) which went by water. The transportation and other means of their removal are charged for as if they were conveyed by land. This cannot be sanctioned. An account must be rendered showing the expenses actually incurred, which will be adjusted as may seem to be right when it is presented. In the mean time, this abstract is to stand over. This determination conforms to General Scott's view of the matter; for he speaks emphatically of the arrangement between himself and the Cherokee delegates as confined to emigration by land.

The original of Mr. Clarke's interrogatories, and of General Scott's answer, should be filed in the department, as well as the original order of the national Cherokee council. Of these papers severally, we have only copies—of the latter paper, a certified copy.

Since the foregoing directions were given, I have examined some additional evidence not brought particularly to my notice before, and am satisfied to leave it to the accounting officers to decide whether the proofs do not show that the party emigrated by water did not cost as much in fact as those emigrated by land, and to allow the claim upon that ground, if they shall so find the proof, or so much as they shall find the costs to have been upon the proof now presented, deducting the six days' detention at the mouth of the Ohio, detailed in Lea's deposition.

SEPTEMBER 6, 1841. J. B.

Resolutions of Cherokee nation, referred to in defendant's 1st bill of exceptions, p. 16.

"Whereas, in the month of May, 1838, the Cherokee nation east of the Mississippi was in a state of capture by an army of the United States, under the command of Major General Scott, for the avowed purpose of removing west of the Mississippi;

"And whereas, at the crisis, it was thought expedient by the United

States, in order to diminish the sources of irritation produced among the Cherokees by the hereinbefore stated and other causes, regarded by them as harsh and unauthorized, to change the mode of removal, with an understanding on the part of the Cherokees that the remaining concurments should be left for subsequent adjustment;

"And whereas, in consequence of the aforesaid change of policy, General Scott was vested with unlimited powers from the United States Executive to arrange with the Cherokees for their self removal, and for the withdrawal of his army;

"And whereas, pursuant to the authority in question, General Scott did arrange with the Cherokee nation, through their regularly constituted special agents, for that purpose, and which special agents calculated with General Scott a basis for the amount to be paid for the expense, rating the component parts from the customary allowance by the War Department upon such items, when contracted for with citizens of the United States;

"And whereas it was supposed that the emigration might be entirely completed in eighty days, more or less, although it was impossible to covenant for any special time;

"And whereas it appeared that, if eighty days should be the time consumed in the emigration, the aggregate of the component parts of the aforesaid estimate would make the cost of each person for the eighty days amount to sixty-five dollars and eighty-eight cents, and hence on that sum it was concluded to fix as the basis of the charge, to which it was agreed to add the single article of soap, at fifteen cents per pound;

"And whereas it was fully understood, between the Cherokee nation, through their special agents, and General Scott, fully empowered to represent in this matter the United States, that sixty-five dollars and eighty-eight cents, with the aforesaid addition for soap, was a fair allowance for eighty days' expenses each in emigrating the Cherokees, that amount per head being necessarily liable to reduction or to increase at the same rate in the event of a lesser or greater length of time proving requisite for the purpose than the above mentioned eighty days;

"And whereas, under the aforesaid arrangement, the Cherokee people were formed into thirteen detachments, and the removal was to proceed by such routes as might appear most eligible, but its commencement by no means to be delayed beyond the first day of September, one thousand eight hundred and thirty-eight, then next ensuing;

"And whereas, these conditions being fully settled, the special agents of the nation, acting on the nation's behalf, after having made divers appointments for the purpose of carrying it into effect, in order to condense the business, did delegate its entire superintendence to one of their body, John Ross, and by John Ross such persons were deputed for the management of the various departments, on account of the nation, as were considered best qualified for the purpose;

"And whereas, before the first day of September, one thousand eight hundred and thirty-eight, which day formed the limit of the term covenanted for, John Ross caused the removal to be commenced, and

the first detachment actually to be under way, upon the twenty-eighth day of August previous; but in consequence of the awful sickness among the people, and the drought which pervaded the country through which they had to pass, General Scott, and not John Ross, called a halt, and ordered the emigration to be suspended;

"And whereas the emigration, in consequence of the considerateness of General Scott, actually was suspended for several weeks, and thereby a necessity entailed for further delay, and especially among some of the detachments that, on arriving at the Mississippi, found it impassable from the ice accumulated therein in consequence of the advance of winter;

"And whereas the different causes of protraction extended the time occupied in removal variously, but in every instance beyond the limit first contemplated of eighty days, and consequently enlarged proportionately the cost of the emigration to the United States;

"And whereas it appears, from the report of John Ross, the superintendent, that there is a balance still in arrear to the Cherokee nation of five hundred and eighty-one thousand three hundred and forty-six dollars eighty-eight and a half cents, which balance has been repeatedly applied for, but the payment of which has been withheld;

"Now, therefore, by the national committee and council of the Cherokee nation in national council assembled, it is—

"Resolved, That the conditions of the contract made between General Scott, on the part of the United States, and the special agents, including John Ross, on the behalf of the Cherokee nation, for removing the Cherokees east of the Mississippi to their destination west of Arkansas, have been scrupulously fulfilled on the part of the United States as represented by General Scott.

"Resolved, That the aforesaid failure of the United States to sustain the pledges given to the Cherokee nation by General Scott, has caused the deepest distress among numbers of its citizens who have claims upon the balance due, and that a final settlement, especially under the trying circumstances of the Cherokee people of late, is of vital importance.

"Resolved, That the authority vested in the special agents, and continued by the act of union between the eastern and western Cherokees, passed at Illinois camp ground, on the twelfth day of July, one thousand eight hundred and thirty-nine, and by them conferred upon one of their members, John Ross, as superintendent, with a view to facilitate the duties required of them, be, and the same is hereby, approved and ratified.

"And further resolved, (in support of the aforesaid authority,) That by the Cherokee nation, through their national committee and council in national council assembled, it is hereby ordered that the aforesaid John Ross be, and he is hereby, directed and fully empowered to proceed to Washington City, and to urge a settlement of this claim with all possible expedition, and to apply for and receive from the Government of the United States, in the name of the Cherokee nation, the balance due of five hundred and eighty-one thousand three hundred

and forty-six dollars and eighty-eight and a half cents, as stated in the account of the emigration claim, in order that the business growing out of it may be brought to a final close."

Requisition of the War Department referred to in defendant's 1st exception, page 16.)

WAR DEPARTMENT.

$486,939 50. No. 4,761.

To the Secretary of the Treasury.

SIR: Please to cause a warrant for four hundred and eighty-six thousand nine hundred and thirty-nine dollars and fifty cents, to be issued in favor of John Ross, principal chief of the Cherokee nation, per order, present, due Cherokee nation on settlement, per certificate, 2d comptroller, No. 6,640, to be charged to the undermentioned appropriations.

Given under my hand this 17th day of September, 1841.

ALBERT M. LEE,
Acting Secretary of War.

Countersigned ALBION K. PARRIS,
Second Comptroller.

Received and registered 17th.

W. B. LEWIS,
Second Auditor.

Appropriation.

Carrying into effect treaty with the Cherokees Act 2d July, 1836. - - $486,939 50

Warrant on the Treasurer.

Warrant and receipt of John Ross, referred to [in] defendant's 1st exceptions, (page 16.)

TREASURY DEPARTMENT.

To William Selden, Treasurer of the United States, greeting:

Warrant. Pay to John Ross, principal chief of the Cherokee nation, per order, presents,

War Depar't, No. 7,429. or order, out of the appropriation *made* in the margin, four hundred and eighty-six thousand nine hundred and thirty-nine dollars and fifty cents, due Cherokee nation on settlement.

Appropriation. Pursuant to requisition No. 4,761, of the Secretary of War, dated 17th September, 1841, countersigned by the second comptroller of the Treasury, and registered by the 2d auditor; for so doing this shall be your warrant.

Carrying into effect with the Cherokees, act 2d July, 1836.

Given under my hand and the seal of the Treasury, this seventeenth day of September, in the year one thousand eight hundred and forty-one, and of independence the sixty-sixth.

W. FORWARD,
Secretary of the Treasury.

$486,939 50

Countersigned.

J. N. BARKER,
Acting Comptroller.

Register.

J. L. SMITH,
Register.

Receipt of John Ross.

Received the following draft[s] on the Bank of Commerce, New York, viz:

No. 8,664	to	8,668,	5	of	$20,000	each,	$100,000
" 8,669	"	8,688,	20	"	10,000	"	200,000
" 8,689	"	8,724,	36	"	5,000	"	180,000
" 8,725			1				4,939 50
" 8,726			1				2,000
			63	drafts			$486,939 50

JNO. ROSS.

On the trial of this cause it is admitted that John Ross received the money specified in the foregoing drafts, amounting to $486,939 $\frac{50}{100}$.

JOS. H. BRADLEY,
Defendant's attorney.

Exhibit B and C, referred to in defendant's 2d bill of exceptions, (page 19.)

Exhibit B (and C.)

Whereas it is the duty of the representatives of the people of the Cherokee Nation, to require information and legislate on all subjects touching the rights and interests of those whom they represent:

Therefore, be it resolved, by the national council, that John Ross, principal chief, be, and he is hereby requested, to lay before the national council, during its present session, a full and fair statement of the amount of money received by him from the Government of the United States since the year 1835, and how applied, and what amount is now in his hands (if any,) subject to legislation.

Exhibit C.

To the National Committee and Council,
in national council convened.

If the intention of the resolutions of your bodies of the 14th inst., calling for a settlement of all moneys received by me from the United

States Government, since the year 1835, and how applied; and also the amount (if any,) in my hands, subject to legislation, be to seek information respecting the public moneys of the nation—I reply, that the annuities were received by the treasurer of the nation, John Martin, and by him disbursed under the laws of the eastern Cherokees, up to the fall of 1837; and in 1841, the annuities and school fund were received by the present treasurer, Mr. David Vaun.

In the summer of 1838, in the absence of the delegation appointed to represent our wrongs to the Government of the United States, and to ask redress, our people were captured by the troops of the United States, under pretext of carrying into effect the provisions of Schermerhorn's treaty. Under these operations they were forced from their homes; some marched before the troops through rivers and mud, to the forts and camps in which they were confined, and some driven in boats at the point of the bayonet. Our people well remember the sufferings they endured, and it is affliction to call to mind the frightful ravages made among them by sickness and death, and the ruinous loss of property they sustained by this cruel treatment. While these things were doing, the delegation was pressing on the attention of the Government of the United States the claims of the nation. The result of which was, a special appropriation of $1,147,000.

Had this appropriation not been made, the whole of the expenses of the emigration must have been defrayed out of the funds provided by the Schermerhorn treaty, as was contemplated by the makers of it, as well as by the distinct stipulations of the instrument itself. This amount, then, is a clear gain to the Cherokee people. Out of this appropriation, a sum of money was received by the delegation, was disbursed by the national committee in discharge of the debts of the nation. Soon after their return from Washington, in order to stop the transportation by water, already in progress under the direction of the United States' officers, the same delegation was authorized by the national committee and council, and people of the Cherokee nation, in general council assembled, to make arrangements with General W. Scott for the removal of the people through the agency of our own people.

This authority is recognised and reaffirmed by the act of union, by vesting in the delegation, who, it says, shall continue in charge of the business with their present powers until it shall be finally closed.

Under this arrangement, advancements were made by General Scott out of the same appropriation, and applied to the purposes of emigration.

In 1841, the arrearages due on the emigration, so long withheld, were received agreeable to the resolution of the national council, passed on the 11th day of November, 1840, out of which, as stated in my message, since the adjournment of your extra session last year, the disbursements of the claims upon the emigration, under the arrangement of General Scott, was resumed under my superintendency, and the payments continued for about three months, up to the time of my de-

parture to Washington. So soon as the papers appertaining to this business can be arranged, and a full exhibit of disbursements prepared, and such claims as yet remain unadjusted be disposed of, the transactions of my superintendency will be reported to the nation through the special agents charged with this duty. There are no moneys in my hands subject to legislation.

The sentiments of the petition from certain citizens of Delaware district, placed in my hands by your direction, viewed in connexion with your resolutions, imply that I have received all moneys paid by the Government of the United States on account of Cherokees since the year 1835, without having rendered any account of them. The combined tenor of the two papers seem to embrace even the moneys received and expended under the Schermerhorn compact, from which the people have been incited to expect per capita money. Now it is well known the nation has always disclaimed that compact, and that I have disclaimed it also.

How, then, could per capita money, under its provisions, come into my hands? Yet there can be no doubt immense sums of money were expended under its provisions, and charged to the nation, which it would be very proper to examine into.

I have no documents in my possession with information respecting disbursements under that compact; but if the books and papers of the committee of thirteen who acted under it, together with those of the commissioners, were laid before the council and people, they would no doubt shed much light on the subject.

It is known to the Cherokee people that several points in controversy, as well as their public and private claims against the United States, remain open and unadjusted; and though the delegation, in the late negotiation with the Secretary of War, failed to procure their settlement, we still hold not only just and equitable claims on the United States Government, but the unequivocal promise of the President that they shall be satisfied; and, as you have been informed in my message, commissioners have been appointed for the purpose of investigating these claims.

JOHN ROSS.

Executive Department, December 20, 1842.
Test—W. BRENT, *Clerk*.

Appeal to Supreme Court, U. S.

And whereas afterwards, to wit, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and forty-eight, the said plaintiff, by his attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors upon the judgment aforesaid, directed to the judges of the circuit court of the district of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of

error aforesaid, and a copy of the appeal bond hereunto annexed, are hereby transmitted to the said Supreme Court accordingly.

Clerk's certificate and seal.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, this 17th day of February, A. D. 1849.

[SEAL.]

JNO. A. SMITH, *Clerk.*